# State of Connecticut
GENERAL ASSEMBLY

PERMANENT COMMISSION ON
THE STATUS OF WOMEN

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**Testimony of**
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**Before the**
**Insurance and Real Estate Committee**
**Thursday, February 10,2005**

**Re: Medical Malpractice**

**C.B. 131, AAC Medical Malpractice Insurance Reform**
**Proposed S.B. 431, An Act Requiring Prior Approval for Medical Malpractice Insurance Rates**
**Proposed H.B. 6131, An Act Reforming the Medical Malpractice Insurance Laws**

Good afternoon Sen. Crisco, Rep. O'Connor, and members of the Committee. My name is Leslie Gabel-Brett and I am the Executive Director of the Permanent Commission on the Status of Women. Thank you for this opportunity to testify regarding medical malpractice.

As many of you know, we have testified in the past on this topic for two reasons: First, because rapidly rising medical malpractice premiums have disproportionately affected obstetrician/gynecologists (OB/GYN's) who provide vital reproductive health care to women; and second, because caps on non-economic damages would disproportionately harm female patients who are victims of malpractice. The rapid rise in medical malpractice premiums is a serious women's health care issue that requires an effective solution.

I would like to explain why we oppose caps on non-economic damages. Empirical research conducted by law professor Lucinda Finley on gynecological malpractice cases over the past ten years in California and Florida shows that non-economic damages comprised approximately 75% of women's total awards. The reason

is that the harm suffered by women in these cases include impaired fertility or sexual functioning, miscarriage, incontinence, and disfigurement of intimate areas of the body and these consequences, while very significant, are not directly related to economic losses. Finley concludes that capping non-economic damages will have a discriminatory impact on women patients that will be "the greatest when women experience the most profound sort of harm to their sexual and reproductive lives."

As you know, women earn approximately 25% less than men earn; limiting damages to primarily economic damages perpetuates this inequality in the face of injuries caused by malpractice. That is, the cashier gets little compared to the CEO even if the cashier has suffered the same or more serious injury. (This analysis applies, of course, regardless of the gender of the individuals – it is unfortunately true, however, that women are disproportionately represented in low-wage occupations compared to men.)

Women also have a longer life expectancy and are more likely to be old and poor. The tort system has two important purposes - on the one hand, to compensate victims of negligence or intentional harm and, on the other hand, to deter negligent or intentionally harmful behavior. For older, poor victims of malpractice with very modest streams of income, there would be little compensation and *no deterrence against malpractice* in their medical care because the economic risk is so low.

We are also very concerned about the conditions facing OB/GYN's. The premiums they are now facing are unfair and intolerable. We have learned that some OB/GYN's have stopped delivering babies because that is the part of the practice that carries the highest risk. Some group practices have required their OB/GYN's to take 'sabbaticals' from delivering babies in order to reduce premiums for the practice as a whole. As a result of these strategies, women patients must sometimes have their babies with a physician they have not previously met. Moreover, young doctors and medical students are not choosing to enter this specialty, and doctors with family responsibilities who might wish to work part-time are not able to make that choice because it is not economically feasible to do so. This is bad medicine – it is not good for patients or for physicians who want to provide the best care they can to women.

We advocate a balanced, comprehensive approach to medical malpractice reform that emphasizes patient safety, fairness in litigation procedures, stronger oversight of doctors who commit malpractice, and much greater state regulation of the rate-setting practices of the insurers. We strongly support the proposals contained in the committee bill, C.B. 131, in proposed S.B. 431, and in Governor Rell's proposals for prior rate approval and other important measures. All of the provisions included in C.B. 131 will help to reduce medical malpractice premiums. We support some of the provisions of proposed H.B. 6131, but oppose the imposition of a $250,000 cap on non-economic damages.

In addition, we respectfully recommend incentives to hospitals and providers who implement patient safety methods that have been proven to be effective, and a requirement that insurers offer reduced rates to part-time physicians.

As we have in the past, we also urge you to consider government sponsored re-insurance or "no fault" compensation funds to help spread the risk and ensure that

patients who have been injured and need expensive medical care can obtain it. One of the factors driving up the cost of insurance is the rising cost of health care itself. When an individual has a serious medical injury – whether it is caused by malpractice or not – the costs of the necessary health care may create an impossible burden for the individual and his or her family to bear. In some cases, a patient would choose a fair compensation plan administered by a government fund instead of rolling the dice and suing the health care provider. When no such fund or assistance is available, the tort system is often the only recourse available.

The medical malpractice system includes doctors, lawyers, hospitals, insurers and patients. It is clearly out of balance. But it does not make sense to begin our reform of this system by limiting funds to injured patients. We urge passage of C.B. 131 and consideration of the additional measures we have recommended to reduce malpractice premiums. Thank you.